IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9079 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURENDRANAGAR DIST PANCHAYAT & 2 - Petitioner(s)

Versus

PARSHOTTAMBHAI MANJIBHAI C/O JILLA KAMDAR SANGH - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1,2.

MRS DT SHAH for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 28/06/2005

ORAL JUDGMENT

1. This petition is directed against the order dated 5th January, 1999 passed by the Labour Court, Surendranagar in Reference [L.C.S.] No. 244 of 1990, whereby the Labour Court has directed the petitioner Panchayat to reinstate the respondent in service with 25% back wages w.e.f. 29th

September, 1990.

2. The short facts of the case are that the respondent workman was working as a daily wager, purely on temporary and ad-hoc basis. The respondent workman however, in all had worked for less than 240 days during the period from 1980 to 1982. Thereafter since the work was completed, the respondent workman was not not provided with the work.

2.1. Being aggrieved by the said action, the respondent workman after a period of eight years raised an industrial dispute which was ultimately, referred to the Labour Court, Surendranagar. The Labour Court after appreciating the materials placed before it, allowed the Reference with the aforesaid directions. Hence, this petition.

3. Mr. Munshaw has contended that though specific contention regarding provisions of Sections 2(oo)(bb) of the Industrial Disputes Act, 1947 was raised before the Labour Court, the same was not taken into consideration by the Labour Court.

3.1. Mr. Munshaw learned advocate for the petitioner Panchayat has further submitted that it is not disputed that the respondent workman had worked till 1982 and therefore, there is no evidence on record to show that the

respondent workman had completed 240 days in the said year. Thus, the Labour Court has committed an error in granting reinstatement in service with 25% back wages.

3.1. In support of his contention he had relied upon the decision of the Apex Court in case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan & Anr., reported in (2004) 8 S.C.C. p. 161**, wherein the Apex Court has held that as under :-

> "In our view the Labour Court and the High Court have failed to consider the statutory requirements in their proper perspective. One of the stands taken by the employer was that the engagement was made keeping in view the temporary needs and it was seasonal in character. No definite finding was recorded by the Labour Court or the High Court in that regard.
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> We, therefore, remit the matter to the Labour Court to consider the evidence and come to a definite conclusion as to whether the workman had worked for 240 days during the period claimed. While considering the matter afresh, the aspect of need of engagement shall not be examined. If the engagement is found to be not for 240 days during the relevant period, then this aspect may not be considered. In case the Labour Court comes to a finding in the affirmative, its original order shall be maintained subject to consideration of the seasonal need aspect. If its answer is in the negative the Labour Court shall pass appropriate orders."

4. As against that Mrs. D.T. Shah learned advocate for the respondent workman has contended that the respondent workman was not allowed to work by the petitioner Panchayat. She has further submitted that the petitioner Panchayat had terminated the service of the respondent workman without following any due procedure under the Industrial Disputes Act and, therefore, the Labour Court was justified in exercising powers in favour of the respondent workman.

5. I have heard the learned advocates for the respective parties and have perused the materials placed on record. Having perused the record, it transpires that the respondent workman had not worked since the year 1982 and thereby had not completed 240 days in a year. However, in view of the decision of the Apex Court in the case of Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan & Anr., (Supra), the contention raised by the learned advocate for the petitioner Panchayat with regard to consideration of Section 2 (oo)(bb) of the Industrial Disputes Act, is required to be adjudicated by the Labour Court. Thus, in view of the aforesaid decision, the impugned order is required to be quashed and set aside and the matter is required to be remanded to the Labour Court for deciding afresh.

6. In the premises aforesaid, the petition is allowed. The order dated 5th January, 1999 passed by the

Labour Court, Surendranagar in Reference [L.C.S.] No. 244 of 1990, is quashed and set aside. The matter is remanded to the Labour Court for decision afresh. Since the Reference is of the year 1990, the Labour Court is directed to dispose of the said Reference within a period of six months from the date of receipt of writ of this order. The Labour Court while deciding the Reference, shall not be influenced by the fact that this Court has quashed its earlier order. Since it is stated by Mrs. Shah, that the direction issued by this Court vide order dated 6th July, 2001 in Civil Application No. 6848 of 2001 have not been complied with so far, the petitioner Panchayat is directed to comply with the directions issued in the said order on or before 31st August, 2005. Rule is made absolute to the aforesaid extent with no order as to costs.

[**K.S. JHAVERI, J.]**

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